Notice of Allowability	Application No.	Applicant(s)	
	09/321,967	FRANK ET AL.	
	Examiner	Art Unit	
	Li B. Zhen	2194	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to *02/02/2006*.

2. ☒ The allowed claim(s) is/are *1,4-13,16-24,26,28-45,48-52,54 and 56-62, renumbered as claims 1-52*.

3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

 * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

5. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 1) ☒ hereto or 2) ☐ to Paper No./Mail Date _____.
 (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

 Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☒ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date 6/10/05
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____ .
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

WILLIAM THOMSON
SUPERVISORY PATENT EXAMINER

DETAILED ACTION

1. 1, 4-13, 16-24, 26, 28-45, 48-52, 54 and 56-62 are pending in the application.

REASONS FOR ALLOWANCE

2. The following is an examiner's statement of reasons for allowance:

The prior art does not expressly teach or render obvious the invention as recited in independent claims 1, 7, 12, 13, 19, 20, 24, 32, 40 - 44 and 51.

The prior art teach a figure of merit indicating a value for a member node to continue operation [column 4, lines 50 – 67 of Modiri], querying an user application program [col. 3, lines 45 – 52 of Mullen], the cluster management software and an application program determine a node's value [column 6, lines 30 – 35 of Modiri] and a cluster framework that includes modules such as the Cluster membership and quorum and reconfiguration that provides reconfiguration decision making [column 4, lines 50 – 67 of Modiri]. However, the prior art does not teach determining a figure of merit by a user application program by assessing merit criteria for the member node, where assessing merit criteria includes determining a number of users executing the user application from the member node (claims 1, 12, 13, 19, 20, 42, 43, 44) or determining an execution priority of the user application program (claims 24, 40, 41, 42, 43, 51). Further, the prior art does not teach requesting a node figure of merit from a user application executing on a cluster partition indicating a values for a member node to continue operation, evaluating node figure of merit to determine partition figure of merit,

selecting a cluster partition to operate as the network cluster in response to the partition figure of merit, and halting the remaining cluster partitions (claims 7 and 32).

Nor was a reference uncovered that would have provided a basis of evidence for asserting a motivation that one of ordinary skill level in the art at the time the invention was made would have integrated or further modified the cluster management system with determining a figure of merit by a user application program by assessing merit criteria for the member node, where assessing merit criteria includes determining a number of users executing the user application from the member node (claims 1, 12, 13, 19, 20, 42, 43, 44) or determining an execution priority of the user application program (claims 24, 40, 41, 42, 43, 51) or requesting a node figure of merit from a user application executing on a cluster partition indicating a values for a member node to continue operation, evaluating node figure of merit to determine partition figure of merit, selecting a cluster partition to operate as the network cluster in response to the partition figure of merit, and halting the remaining cluster partitions as recited in the context of independent claims 1, 7, 12, 13, 19, 20, 24, 32, 40 - 44 and 51.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

CONTACT INFORMATION

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Li B. Zhen whose telephone number is (571) 272-3768. The examiner can normally be reached on Mon - Fri, 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Thomson can be reached on 571-272-3718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Li B. Zhen
Examiner
Art Unit 2194

lbz

WILLIAM THOMSON
SUPERVISORY PATENT EXAMINER